

**BellSouth Telecommunications, Inc**  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

04 APR 29 PM 4 15  
April 29, 2004

**Guy M. Hicks**  
General Counsel

615 214 6301  
Fax 615 214 7406

③ TN REGULATORY AUTHORITY  
DOCKET ROOM

VIA HAND DELIVERY

Hon. Kim Beals, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*  
Docket No. 04-00046

Dear Ms. Beals:

On April 26, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed, in the above-referenced docket, a letter summarizing the recommendation of the Staffs of the Louisiana and Georgia Public Service Commissions with regard to the Motions to Sever or to Impose Procedural Restrictions filed in similar proceedings to the above-referenced proceedings in Georgia and Louisiana.

The Georgia Public Service Commission ("GPSC"), on April 22, 2004, filed its Order on BellSouth's *Motion to Sever or Impose Procedural Restrictions*. While the GPSC decided not to sever the Georgia proceeding, the GPSC did agree with BellSouth that procedural safeguards should be adopted. More specifically, the GPSC found that the Joint Petitioners may only sponsor one witness, or witness panel, for each issue or sub-issue, and the CLECs may only cross-examine each BellSouth witness, or witness panel, once.

The Louisiana Public Service Commission ("LPSC"), on April 26, 2004, entered its Order on *BellSouth's Motion*. While the LPSC decided not to sever the Louisiana proceeding, the LPSC also agreed with BellSouth that procedural safeguards should be adopted. More specifically, the LPSC found that the Joint Petitioners may nominate a common witness to testify on behalf of all Petitioners

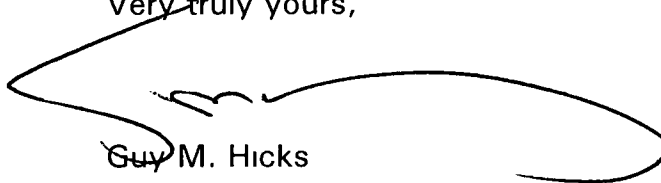
Hon. Kim Beals, Hearing Officer  
April 29, 2004  
Page 2

for each issue or subissue. If BellSouth objects to the common witness' testimony, and the objection is sustained, each Petitioner will be provided the opportunity to file company-specific testimony and have the opportunity for a witness to testify to company-specific facts.

For the convenience of the Authority, I am enclosing fifteen copies of the GPSC's and LPSC's Orders.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", with a large, sweeping loop extending to the right.

GMH:ch

**BEFORE THE**  
**LOUISIANA PUBLIC SERVICE COMMISSION**

**NEWSOUTH COMMUNICATIONS  
CORP., KMC TELECOM V, INC.,  
KMC TELECOM III, LLC, and  
XSPEDIUS MANAGEMENT CO.  
SWITCHED SERVICES, LLC, XSPEDIUS  
MANAGEMENT CO. OF BATON ROUGE,  
LLC, XSPEDIUS MANAGEMENT CO. OF  
LOUISIANA, LLC and XSPEDIUS  
MANAGEMENT CO. OF SHREVEPORT,  
ex parte**

**DOCKET NO. U-27798**

**In re: Joint Petition for Arbitration of an  
Interconnection agreement with BellSouth  
Telecommunications, Inc. pursuant to Section  
252(b) of the Communications Act of 1934,  
as amended.**

\* \* \* \* \*

**ORDER**

Considering the forgoing *Motion & Recommendation*;

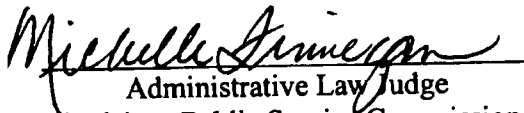
IT IS HEREBY ORDERED:

1. That "Bellsouth's Motion To Sever Or To Impose Procedural Restrictions" is denied.
2. As it relates to common testimony, Petitioners nominate one witness ("Common Witness") to testify on behalf of all Petitioners. There can be a Common Witness for each issue or sub-issue in dispute. The Common Witness' testimony will inure to the benefit of all Petitioners.
3. If Bellsouth objects to the Common Witness' testimony on the grounds of hearsay; and the objections are sustained, each Petitioner will have an opportunity to have a

predetermined witness ("Fact Specific Witness") testify on its behalf in order to introduce the hearsay testimony of the Common Witness.

4. Each Petitioner will have an opportunity to file company specific testimony and have an opportunity for a witness testify to those company specific facts.

Baton Rouge, Louisiana this 26th day of April, 2004.

  
Administrative Law Judge  
Louisiana Public Service Commission

*cc: Official Service List*

**Service List**

**Docket No. - U-27798**

**All Commissioners**

**Edmond Jordan - LPSC Staff Attorney**

**Pam Meades - LPSC Utilities Division**

**Missy Tassin - LPSC Utilities Division**

**AA- Paul F. Guarisco, Shirley & Ezell, LLC, 2354 S. Acadian Thruway, Suite F, Baton Rouge, LA 70808 P: (225) 344-0302 F: (225) 343-2040 Email: [pguarisco@shirleyandezell.com](mailto:pguarisco@shirleyandezell.com)**

**John J. Heitmann, Enrico C. Soriano, Heather T. Hendrickson, Kelley Drye & Warren LLP, 1200 19<sup>th</sup>, NW, Suite 500, Washington DC 20036 P: (202) 955-9600 F: (202) 955-9792.**

**Victoria K. McHenry, 365 Canal Street, Suite 3060, New Orleans LA 70130 P: (504) 528-2050 F: (504) 528-2948 Email: [Victoria.mchenry@bellsouth.com](mailto:Victoria.mchenry@bellsouth.com) on behalf of BellSouth.**

**IP- Janet S. Britton, EATEL, 913 South Burnside Avenue, Gonzales LA 70737-4258 P: (225) 621-4498 F: (225) 647-7927 <mailto:janet@eatel.com> on behalf of Advanced Tel, Inc.**

COMMISSIONERS:  
H. DOUG EVERETT, CHAIRMAN  
ROBERT B. BAKER, JR.  
DAVID L. BURGESS  
ANGELA ELIZABETH SPEIR  
STAN WISE



**RECEIVED**

APR 22 2004

DEBORAH K. FLANNAGAN  
EXECUTIVE DIRECTOR

EXECUTIVE SECRETARY

Georgia Public Service Commission

REECE McALISTER  
EXECUTIVE SECRETARY

(404) 656-4501  
(800) 282-5813

244 WASHINGTON STREET, S.W.  
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-234  
www.psc.state.ga.us

**RECEIVED**  
APR 27 2004

GENERAL COUNSEL  
GEORGIA

DOCKET # 18409  
DOCUMENT # 72228

Docket No. 18409-U

In Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc. KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of its Operating Subsidiaries Xspedius Management Co Switched Services, LLC and Xspedius Management Co. of Atlanta, LLC

**ORDER ON MOTION TO SEVER**

On February 11, 2004, NewSouth Communications Corp., NuVox Communications, Inc. KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Atlanta, LLC ("Joint Petitioners") filed with the Georgia Public Service Commission ("Commission") a joint petition for arbitration with BellSouth Telecommunications, Inc. ("BellSouth"). The Joint Petitioners defended the requested consolidation by arguing that proceeding in such a manner will maximize limited resources, efficiency and bargaining power (Joint Petition, ¶ 12).

On March 1, 2004, BellSouth filed a Motion to Sever, or in the Alternative to Impose Procedural Restrictions ("Motion"). In its Motion, BellSouth stated that the Federal Telecommunications Act of 1996 ("Federal Act") did not contemplate consolidated arbitration petitions but conceded that there were times when consolidation would be appropriate. (Motion, p. 2). BellSouth stated that the Joint Petition suffered from two flaws. First, the proper procedure would be for the Joint Petitioners to have filed separately and then moved for consolidation. *Id.* Second, BellSouth argued that the Joint Petitioners did not adequately set forth the justifications for consolidation. *Id.* BellSouth stated that it would not object to the consolidation with the adoption of certain safeguards. Specifically, the Joint Petitioners' positions with respect to the issues raised in the arbitration should be identical, the Joint Petitioners should be limited to cross-examining each BellSouth witness only once, and the Joint Petitioners should be limited to one witness per issue. *Id.* at 5.

On March 9, 2004, the Joint Petitioners filed a Response and Opposition to BellSouth's Motion. In its Response, the Joint Petitioners reiterated the potential for efficiency with a consolidated arbitration. Of the over 100 outstanding issues, only six are raised by just one of the CLECs. (Response, FN 1). Also, the Joint Petitioners argued that the Federal Act did indeed

contemplate multiple requesting carriers to an arbitration as evidenced by the reference in 47 U.S.C. § 252(a)(1) to "a requesting telecommunications carrier or carriers." *Id.* at 3. The Joint Petitioners also reason that the negotiations were conducted jointly; therefore it would be wasteful to require four separate petitions for arbitration. *Id.* at 5. Finally, the Joint Petitioners criticized BellSouth's Motion for a failure to cite legal authority or rational basis for requiring the Joint Petitioners to file separately and then move for consolidation. *Id.*

On March 25, 2004, BellSouth filed a Reply Memorandum in Support of its Motion ("Reply"). BellSouth's Reply focused on the lack of precedence for the Joint Petitioners' proposal and the potential unfairness to BellSouth of any "strategic gamesmanship" that may be employed by having individual petitioners stake out positions of varying degrees of aggressiveness with respect to a particular issue. (Reply, p.6). Finally, on March 30, 2004, the Joint Petitioners filed a Rebuttal to BellSouth's Reply Memorandum ("Rebuttal"). The Joint Petitioners pointed out that they have adopted a single position statement with respect to each issue and that they would cross-examine BellSouth once per issue. (Rebuttal, p. 3). Further, the Joint Petitioners argued that not only did BellSouth fail to state any reasonable claim of prejudice that it would incur should the arbitration be consolidated, but the Joint Petitioners would stand to be prejudiced should the Commission adopt the restrictions proposed in BellSouth's Motion on their right to sponsor testimony. *Id.* at 3-4.

## DISCUSSION

While there is a benefit to administrative efficiency, it should not disadvantage BellSouth in its ability to defend its positions. BellSouth does not categorically object to moving forward with a consolidated arbitration, but has identified several conditions that it believes should be incorporated into any such proceeding. The Commission denies BellSouth's Motion to Sever, and focuses on what procedural safeguards must be in place in order to strike the proper balance that will achieve the efficiencies of consolidation without prejudicing BellSouth.

First, the Joint Petitioners may only sponsor one witness, or witness panel, for each issue or sub-issue. The Joint Petitioners may file joint testimony and sponsor a witness panel consisting of representatives on behalf of more than one of the consolidated CLECs. If applicable, a particular witness may offer company-specific experience to support the joint position, but the CLECs as a whole must provide only one position statement. The purpose of this restriction is to avoid the Joint CLECs stating different positions and seeking different forms of relief with respect to an issue. Without this restriction, the efficiencies intended by the consolidation would be lost. Second, the CLECs may only cross examine each BellSouth witness, or witness panel, once. This restriction would not apply if BellSouth were to re-call a witness, or witness panel, for rebuttal. This restriction is necessary in order to avoid prejudice to BellSouth.

At its April 6, 2004, Administrative Session, the Commission adopted its Staff's recommendation to assign the matter to a Hearing Officer for the establishment of a procedural and scheduling order consistent with the procedural safeguards outlined above.

\* \* \* \* \*

Commission Order  
Docket No. 18409-U

Page 2 of 3

**WHEREFORE IT IS ORDERED**, that BellSouth's Motion to Sever is denied.

**ORDERED FURTHER**, that the consolidated arbitration shall proceed subject to the procedural safeguards outlined above.

**—ORDERED FURTHER**, that the matter is hereby assigned to a Hearing Officer for the establishment of a procedural and scheduling order with the procedural safeguards outlined above.

**ORDERED FURTHER**, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission

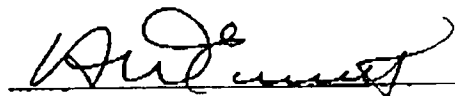
**ORDERED FURTHER**, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6th day of April, 2004.



REECE McALISTER  
Executive Secretary



H. DOUG EVERETT  
Chairman

4-20-04  
DATE

04-20-04  
DATE



## CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2004, a copy of the foregoing document was served on the following, via the method indicated

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

H. LaDon Baltimore, Esquire  
Farrar & Bates  
211 Seventh Ave. N, # 320  
Nashville, TN 37219-1823  
[don.baltimore@farrar-bates.com](mailto:don.baltimore@farrar-bates.com)

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

John J Heitmann  
Kelley Drye & Warren  
1900 19<sup>th</sup> St , NW, #500  
Washington, DC 20036  
[jheitmann@kelleydrye.com](mailto:jheitmann@kelleydrye.com)

A handwritten signature in black ink, appearing to read "John J. Heitmann", is written over a horizontal line.